

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-60111-CR-DIMITROULEAS  
MAGISTRATE JUDGE SNOW

FILED BY: VK D.C.  
2002 NOV 14 PM 3:42  
CLARENCE HADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FL.-FTL.

UNITED STATES OF AMERICA

v.

DANNY WISHER,  
TIMMY COX,  
and MICHAEL CRUMPTON,

Defendants.

Unsealed 7/8/10

**SEALED MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT TIMMY COX'S EX PARTE MOTION UNDER  
FEDERAL RULE OF CRIMINAL PROCEDURE 17(c) FOR  
PRETRIAL PRODUCTION OF DOCUMENTS REQUESTED  
PURSUANT TO SUBPOENA DUCES TECUM**

**PRELIMINARY STATEMENT**

Defendant Timmy Cox, by his undersigned attorney, hereby moves this Court for an Order under Federal Rule of Criminal Procedure 17(c) requiring pretrial production of documents requested in a subpoena duces tecum directed to the Custodian of Documents of the Seminole Tribe of Florida. The proposed subpoena is attached hereto as Exhibit A. The subpoena requests production of documents that are relevant to the issues in this case and essential to the preparation of the defense. Production of these documents in advance of trial, pursuant to Federal Rule of Criminal Procedure 17(c), is essential to allow defense counsel an opportunity to review the documents and integrate them into the defense presentation at trial.

*[Handwritten signature]*

**THE SUBPOENAED DOCUMENTS ARE ESSENTIAL TO THE DEFENSE**

Defendant Timmy Cox and his co-defendants are charged in a multi-count indictment involving allegations that they stole money from the Seminole Tribe of Florida ("STOF" or "the tribe"). Counsel for Mr. Cox expects to offer an authorization defense. Specifically, the defense expects to present evidence that the Chief of the Seminole Tribe of Florida, James Billie, authorized Timmy Cox to take money from an STOF account to conduct business intended to benefit the tribe. One such investment was an internet gaming business.

The defense intends to present evidence that these monies came from Chairman Billie's multi-million dollar "allocation," which was granted to him as a member of the STOF Tribal Council. The defense expects to present evidence that the Council Members' "allocations" were completely discretionary, and that the Chairman acted within his broad discretion in authorizing the defendants to take and spend money from his allocation.

The government's evidence will show that these funds were obtained and spent by a company called Virtual Data, Ltd., which was owned by the defendants. The government is expected to make much of the fact that the tribe was not an owner of Virtual Data, Ltd. The defense expects to present evidence that it was common practice for the tribe to do business through companies in which it had no official ownership interest. The government is also expected to make much of the fact that there was not a Tribal Council Resolution approving the disbursement to Virtual Data. The defense expects to present evidence that the tribe often spent money without obtaining a Resolution from the Tribal Council.

The documents requested in this subpoena are all crucial to this defense. Items 1, 2 and 3 all relate to the STOF Tribal Council's multi-million dollar "allocations." These items request reports reflecting how the members of the Tribal Council representing the Hollywood, Big Cypress and Brighton Reservations spent their multi-million dollar allocations. Undersigned counsel expects that these records will show that allocation monies were entirely discretionary and were spent on a wide range of personal and tribal-related items, including investments in various of the Council members' businesses.

Item 4 requests video and audio recordings of Tribal Council meetings. Records of these meetings are expected to support the defense argument that the method by which the funds in this case were disbursed and expended was consistent with other of the STOF's business ventures.

Item no. 5 requests the stock certificates for a corporation called Seminole S.A. This company managed the STOF's businesses in South America. Evidence will establish that the tribe put millions of dollars into Seminole, S.A. Though this is a tribal entity, the stock certificates issued by Seminole S.A. are expected to show that the tribe was not a shareholder. The shareholders of Seminole, S.A. are all individuals, just as is the case with Virtual Data, Ltd. This evidence will contribute to our establishing that the tribe often did business through companies in which the tribe had no formal ownership interest.

Item 6 requests corporate records of Virtual Data, Ltd., the defendants' corporation that initially received the money that is the subject of this case. It is the defense assertion that the Seminole Tribe was aware of the existence and purpose of Virtual Data Ltd.; we believe that the Tribe may have some of the corporate documents, which would be relevant to this case.

Item 7 requests any documents, including Resolutions, agreements, records of ownership and records of payment, relating to the tribe's investment in Alligator Alley Management Corp. and/or Alligator Alley Restaurant. I have attached as Exhibit B an April 1, 1999 memorandum from George Johnson to James Billie stating that the tribe or Billie had a 50% ownership interest in Alligator Alley, although the tribe's name was "purposely kept . . . off of any public record." This document was in the government discovery. This type of shadow ownership arrangement mirrors what occurred with Virtual Data, and was consistent with the tribe's way of doing business generally. This will be a crucial point for the defense. For this reason, records related to the Alligator Alley investment are relevant to the defense.

Item 8 requests records of a December 11, 1997 meeting of the Tribal Council. Attached as Exhibit C is a summary of the business conducted at that meeting. This record reflects that the tribe was considering an investment in internet gaming. The defense in this case will be that the Virtual Data money went in large part to this venture. The tribe's authenticated records of the December 11<sup>th</sup> meeting, confirming that they were exploring the internet gaming business, will be important to the defense.

Items 9 and 10 relate to payments the tribe made to Nationwide Landscaping. Upon information and belief, the tribe paid Nationwide Landscaping hundreds of thousands of dollars in the period covered by this subpoena. Upon further information, Nationwide Landscaping is owned by a family member of one of the tribal council members who may be a government witness. Our review of the STOF Resolutions provided in discovery reflects that the tribe's payments to Nationwide Landscaping were not approved by a tribal council resolution. Evidence regarding payments to Nationwide Landscaping will be effective in countering the government's claim that the tribe only

made payments pursuant to Resolutions. The amount of the payments – which is far in excess of what would be likely for landscaping services – is also relevant to show the tribe's spending practices.

Rule 17(c) of the Federal Rules of Criminal Procedure provides that, at the court's direction, a subpoena may call for documents to be produced "at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties or their attorneys." This is an appropriate case for an order requiring pretrial production of documents under Rule 17(c). As is demonstrated above, the subpoenaed evidence is relevant to the defense case. Authenticated copies of these records are only available from the tribe. In addition, the government has used the subpoena power to obtain pretrial production of over 6,000 documents from the Seminole Tribe of Florida. It is only fair for the defense to have similar pretrial access to the documents they require for their defense. Finally, pretrial production of these documents will provide the parties with an opportunity to review the evidence prior to the trial commencing, avoiding unnecessary delay in the trial.

**CONCLUSION**

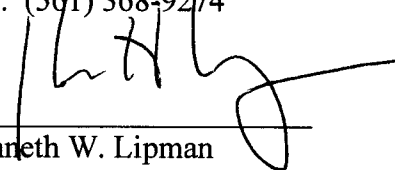
For the foregoing reason, we respectfully ask that the Court grant defendant Timmy Cox's motion for an order requiring pretrial production of documents under Fed. R. Cr. P. 17(c). A proposed order in connection with this motion is submitted to the Court herewith.

Dated: Boca Raton, Florida  
November 14, 2002

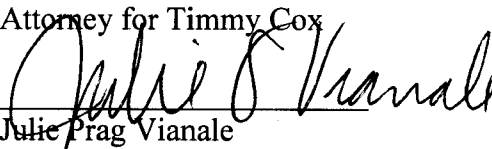
Respectfully submitted,

SIEGEL, LIPMAN, DUNAY &  
SHEPARD, LLP

Attorneys for Timmy Cox  
The Plaza – Suite 801  
5355 Town Center Road  
Boca Raton, Florida 33486  
Tel.: (561) 368-7700  
Fax: (561) 368-9274

  
\_\_\_\_\_  
Kenneth W. Lipman  
Fla. Bar No. 267546

JULIE PRAG VIANALE  
Attorney for Timmy Cox

  
\_\_\_\_\_  
Julie Prag Vianale  
Fla. Bar No. 0184977  
The Plaza – Suite 801  
5355 Town Center Road  
Boca Raton, Florida 33486  
Tel.: (561) 391-4900  
Fax: (561) 368-9274  
E-mail: Jvianale@aol.com

## Exhibit A

AO 89 (Rev. 7/95) Subpoena in a Criminal Case

United States District Court  
Southern District of Florida

**CASE NUMBER:** 02-60111-Cr-Dimitrouleas  
Magistrate Judge Snow

UNITED STATES OF AMERICA

**SUBPOENA IN A  
CRIMINAL CASE**

V.

Danny Wisher, Timmy Cox and  
Michael Crumpton

TO:  
Custodian of Records  
The Seminole Tribe of Florida  
6300 Sterling Road  
Hollywood, Florida 33024

- ☒ YOU ARE COMMANDED to appear in the United States District Court at the place, date and time specified below, or any subsequent place, date and time set by the court, to testify in the above referenced case. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court. \*

**PLACE** United States District Court  
Southern District of Florida  
299 E. Broward Blvd.  
Ft. Lauderdale FL 33301

**COURTROOM** 203

**DATE AND TIME** Wednesday, November 27, 2002  
12:00 noon

- ☒ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

See attached rider

U.S. MAGISTRATE JUDGE OR CLERK OF COURT



(BY) DEPUTY CLERK



**DATE** November 14, 2002

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

Julie Prag Vianale  
5355 Town Center Road - Suite 801  
Boca Raton FL 33486 Tel.: (561) 391-4900

\*In lieu of a personal appearance in court, documents may be delivered to counsel Julie Vianale at the above-noted address.



Rider to Subpoena Duces Tecum dated November 14, 2002 issued to  
Seminole Tribe of Florida in the case of  
***United States v. Danny Wisher, Timmy Cox and Michael Crumpton***  
***Case No. 02-60111-CR-Dimitrouleas***

1. Financial records and/or reports known within the Seminole Tribe of Florida as "Big Button" reports and/or Member Detail Report for all individuals named in the attached Exhibit A, for the period from April 1, 1999 to the date of this subpoena.
2. Any and all financial records and reports reflecting expenditures from reservation allocations for the Hollywood, Big Cypress, and Brighton Reservations for the period from April 1999 to the date of this subpoena.
3. Any and all financial records and reports providing a Summary by Vendor reflecting expenditures from the allocations for the Hollywood, Big Cypress, and Brighton Reservations for the period from April 1999 to the date of this subpoena.
4. Any and all video and audio recordings of Tribal Council meetings from October 1999 through May 2001.
5. Any and all stock certificates issued for Seminole S.A. for the period from October 1999 to the date of this subpoena.
6. Any and all corporate records of Virtual Data, Ltd., a Delaware corporation, including but not limited to the corporate minute book and any stock certificates.
7. Any and all documents, including but not limited to tribal council resolutions, agreements, records of ownership, and records of payments made by STOF reflecting or relating to Alligator Alley Management Corp. and/or Alligator Alley Restaurant from January 1, 1997 to the date of this subpoena.
8. Any and all Minutes for, video and audio recordings of and summaries of the meeting of the Seminole Tribe of Florida Tribal Council held on December 11, 1997.
9. Records reflecting and any all payments from the Seminole Tribe of Florida to Nationwide Landscaping for the period from January 1, 1997 to the date of this subpoena.
10. Any Resolutions of the Tribal Council approving disbursements of funds to Nationwide Landscaping.

## EXHIBIT A

NAME	VENDOR/MEMBER NUMBER
MAX B. OSCEOLA JR.	M0067
MAX B. OSCEOLA III	M1467
MELISSA OSCEOLA	M1370
MEAGHAN OSCEOLA	M2136
MARGE OR MARGARET OSCEOLA	E0917 & MA173
LAURA MAE OSCEOLA	M0700
JOHN JOINT	?
DAVID R. CYPRESS	M0239
DOREEN CYPRESS	M1320
MARCIA CYPRESS	M1244
SHIRLEY CLAY	M0609
MARTHA DOCTOR	M0282
DEVIN CYPRESS	M1555
MITCHELL CYPRESS	M0237
MICHELE CYPRESS	M1229
ANGIE CYPRESS	M1392
JACK SMITH JR.	M0752
ETEAU OSCEOLA	M1851
JUDY A. BAKER	M0001
GUSTAVUS A. BAKER IV	M0002
JUANITA OSCEOLA	M0202
MARCELLUS W. OSCEOLA SR.	M0702
LEON WILCOX	M0980
MARCELLUS W. OSCEOLA JR.	M1184
TREVOR MAX BEAR CYPRESS	M2572
DALE GRASSHOPER	M0540
SARAH MARRERO MCDONALD	M0550
CARLENE OSCEOLA	M0968
MARISSA BAKER	M1321
PRISCILLA SAYEN	M0738
KRISHNA LAWRENCE	KR101
TERESA COLALUCA	TER11
CHRISTINE O'DONNELL	SO250

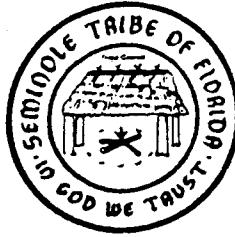
## Exhibit B

# SEMINOLE TRIBE OF FLORIDA

TELEPHONE  
(954) 966-6300  
Ext. 1101

FACSIMILE  
(954) 967-3497

WEBSITE  
www.seminoletribe.com



Tribal Officers:  
JAMES E. BILLIE  
Chairman  
MITCHELL CYPRESS  
Vice Chairman  
PRISCILLA D. SAYEN  
Secretary-Treasurer

**REAL ESTATE SERVICES**  
6300 STIRLING ROAD  
HOLLYWOOD, FLORIDA 33024-2198

## MEMORANDUM

TO: James E. Billie

FROM: George Johnson

RE: Kilmo

DATE: April 1, 1999

I have worked with Kilmo over the past 6 weeks regarding his proposal to develop and operate a themed bar/restaurant/night club. The following have been accomplished to date:

1. Kilmo had preselected 4 possible sites, all along University Drive in Davie-Plantation-Sunrise, with suitable buildings which are either vacant now or may be vacant in the near future. I visited each site and briefly evaluated the pros and cons. The least expensive site with the most potential is a nightclub of about 10,000 sq. ft. in Sunrise, presently operating as HILLBILLY ROCK at 2079 University Drive, in the Sunset Square shopping center. We have concentrated on this site.
2. I incorporated Kilmo as "Alligator Alley Management Corp.", of which he is the sole Director and President, and I am the Secretary for now. Kilmo will own 50% of the stock, you or Seminole Tribe will own 50% of the stock. We purposely kept your name and the Tribe off of any public record in this matter.
3. I applied for and received a federal Employer's ID# for Alligator Alley Management Corp.
4. I will apply to IRS within the 75 days allowed for the corporation to have Subchapter S status (which avoids paying corporate income taxes).

5. I have met several times with the owners of Hillbilly Rock and once with their attorney. I prepared an Asset Purchase Agreement, which they revised, and we have all signed it.

For a purchase price not to exceed \$163,570 we will obtain the following:

1. the existing lease of 10,000 sq. ft.,
2. the liquor license, and
3. all bars, bar equipment, etc.

6. I will need the following funds to close this transaction, all checks made payable to Alligator Alley Management Corp.:

(a) \$18,000.00-immediately

This is the \$15,000.00 escrow deposit in the Asset Purchase Agreement and \$3,000.00 to establish a bank corporate account balance.

(b) \$9,700.00 (approximately)-April 20, 1999

This is 1 month's rent security to be held by landlord.

(c) \$148,570.00-May 5, 1999

This is the balance due at closing (\$163,570 less \$15,000 escrow deposit).

Between now and closing, we will work on the following:

- A. Meet with the Landlord to negotiate a transfer of the lease; and
- B. Transfer the existing liquor license.

Copies of signed closing documents will be provided to you after May 5, 1999.

# Seminole Tribe of Florida

## Requisition Document

# Requisition Document



766#

Approved By (Last Name)

Approved By (Last Name)

Bullw

Requisition	
Number	000636
Date	4/8/99

Number

0000636

Date \_\_\_\_\_

三

Vendor Full Name	Allegator Alley Management Corp.
Special Instructions	Need 4/8/99 - returned to Realty Services -
Comments	

ALLIGATOR ALLEY MANAGEMENT CORP  
 11/11/14/0/00 - 2:15 p.m. 2

## Special Instructions

need 4/8/99 - returned to health services -

Comments

[illegible]

Approval Signature			Program Name <u>Council</u>	Requisition Total <u>18,260.00</u>

Check #	186240	Check Date	4-2-99	Batch #	442	PPd Comp. Ck.		PPd Typed Ck.		Date to Pay	/ /
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Change Notes:

Change Notes:

## Exhibit C

MEETING OF THE TRIBAL COUNCIL HELD ON  
DECEMBER 11, 1997 IN HOLLYWOOD, FL

1/3

Meeting was called to order by Chairman  
James E. Billie at 10:50 a.m.

The meeting was called to review the current  
budget status; herbal medicine project;  
internet gaming; future of housing program;  
Hollywood Park Lease buy out.

97-97: Appointed the following persons to  
serve as members of the Land Use Commission;  
said terms to commence on January 1, 1998 and  
said permit to expire on December 31, 1999: Joe Osceola, Jr.-  
Hollywood; Mary Jumper-Big Cypress; Rosie  
Billie-Brighton; Jennie J. Martinez-Immokalee  
BIFR: that this resolution hereby adopted after  
a motion made by Max B. Osceola, Jr., seconded  
by Jack Smith, Jr. and a roll call vote as  
follows:

Chairman James E. Billie  
Vice Chairman Mitchell Cypress  
Council Rep. David R. Cypress  
Council Rep. Jack Smith, Jr.  
Council Rep. Max B. Osceola, Jr.

Aye  
Aye  
Aye  
Aye  
Aye

98-98: Approves the renewal of Revocable  
Permit No. 142-24 issued by Howard E. Tommie to  
Randy Gettinger d/b/a Pinpoint Marketing, Inc.;  
said permit to expire December 31, 1999; BIFR:  
that this resolution is hereby adopted after a  
motion made by Max B. Osceola, Jr., seconded by  
David R. Cypress and a roll call vote as  
follows:

Chairman James E. Billie  
Vice Chairman Mitchell Cypress  
Council Rep. David R. Cypress  
Council Rep. Jack Smith, Jr.  
Council Rep. Max B. Osceola, Jr.

Aye  
Aye  
Aye  
Aye  
Aye

99-98: Approves the renewal of Revocable  
Permit No. 182-21 issued by Jacob Osceola to  
Randy Gettinger d/b/a Pinpoint Marketing, Inc.;  
said permit to expire December 31, 1999; BIFR:  
that this resolution is hereby adopted after a  
motion made by Max B. Osceola, Jr., seconded by  
David R. Cypress and a roll call vote as  
follows:

Chairman James E. Billie  
Vice Chairman Mitchell Cypress  
Council Rep. David R. Cypress  
Council Rep. Jack Smith, Jr.  
Council Rep. Max B. Osceola, Jr.

Aye  
Aye  
Aye  
Aye  
Aye

C-100-98: Approves the renewal of Revocable  
Permit No. 1528 issued to Anthony Arnoogam  
d/b/a Hummingbird Ice Cream; said permit to  
expire December 31, 1999; BIFR: that this  
resolution is hereby adopted after a motion  
made by Max B. Osceola, Jr., seconded by David  
R. Cypress and a roll call vote as follows:

Chairman James E. Billie  
Vice Chairman Mitchell Cypress  
Council Rep. David R. Cypress  
Council Rep. Jack Smith, Jr.  
Council Rep. Max B. Osceola, Jr.

A)  
A)  
A)  
A)  
A)

C-101-98: Approves the renewal of Revocable  
Permit No. 142-34 issued by Howard E. Tommie  
to Lamar D. Ogden d/b/a LDO Seafood, Inc.; said  
permit to expire December 31, 1999; BIFR: that  
this resolution is hereby adopted after a  
motion made by Max B. Osceola, Jr., seconded by  
David R. Cypress and a roll call vote as  
follows:

Chairman James E. Billie  
Vice Chairman Mitchell Cypress  
Council Rep. David R. Cypress  
Council Rep. Jack Smith, Jr.  
Council Rep. Max B. Osceola, Jr.

Ay  
Ay  
Ay  
Ay  
Ay

C-102-98: Approves the issuance of a no-fee  
Revocable Permit to Barbara Finley for the  
limited retail sale of boxed candy from her  
seat in the Hollywood Seminole Bingo facility;  
BIFR: that said Revocable Permit may be revoke  
by the facility manager, currently Mr. Larry  
Frank, upon 24 hours written or verbal notice;  
BIFR: that this resolution is hereby adopted  
after a motion made by Max B. Osceola, Jr.,  
seconded by David R. Cypress and a roll call  
vote as follows:

Chairman James E. Billie  
Vice Chairman Mitchell Cypress  
Council Rep. David R. Cypress  
Council Rep. Jack Smith, Jr.  
Council Rep. Max B. Osceola, Jr.

Ay  
Ay  
Ay  
Ay  
Ay

C-103-98: Approves the renewal of Revocable  
Permit No. 64-06 to December 31, 1998 with  
monthly permit fee to be increased; BIFR: that  
this resolution is hereby adopted after a  
motion made by Max B. Osceola, Jr., seconded by  
David R. Cypress and a roll call vote as  
follows:



98: contd.

Chairman James E. Billie	Aye
Chairman Mitchell Cypress	Aye
Council Rep. David R. Cypress	Aye
Council Rep. Jack Smith, Jr.	Aye
Council Rep. Max B. Osceola, Jr.	Aye

104-98: Approves the renewal of Revocable Permit No. 1510 issued to Schwan's Sales Enterprises, Inc.; said permit to expire December 31, 1998; BIFR: that this resolution is hereby adopted after a motion made by Max B. Osceola, Jr., seconded by David R. Cypress and a roll call vote as follows:

Chairman James E. Billie	Aye
Chairman Mitchell Cypress	Aye
Council Rep. David R. Cypress	Aye
Council Rep. Jack Smith, Jr.	Aye
Council Rep. Max B. Osceola, Jr.	Aye

105-98: That Business Lease No. 1262- Raymond Garza, Sr. is hereby renewed for a term of five(5) years and will now expire August 31, 2002; BIFR: that this resolution is hereby adopted after a motion made by Max B. Osceola, Jr., seconded by David R. Cypress and a roll call vote as follows:

Chairman James E. Billie	Aye
Chairman Mitchell Cypress	Aye
Council Rep. David R. Cypress	Aye
Council Rep. Jack Smith, Jr.	Aye
Council Rep. Max B. Osceola, Jr.	Aye

106-98: ORIGINAL DOCUMENT NOT SUBMITTED.

107-98: ORIGINAL DOCUMENT NOT SUBMITTED.

ACTION:

BO/DRC	authorize legal counsel to investigate
/0/0	internet gaming proposal and present findings to Council
C/DRC	after review of FY 98 budget current
/1/0	status and recommendations, agreed to distribute per capita of \$1,500/no deductions for period of January 1998 to June 1998.

ABLED:

..... Proposal to develop/market a natural product line

No other business presented, the meeting was adjourned at 3:50 p.m.

/mjw